



Editorial: Abbott is right, Holder is wrong

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The mandatory review of a Texas law that requires voters to show identification at polling places has prompted an unusual request. The Department of Justice, which enforces the Voting Rights Act, is seeking to depose state legislators to see if there was "discriminatory intent" in drafting the controversial measure.

Under the Voting Rights Act, Texas and other states with a history of racial discrimination must have all changes to electoral law approved before they can be implemented. The request to depose lawmakers is part of the ongoing review of the voter ID law, which was passed last year.

The Justice Department, in briefs filed in federal court in Washington, has already concluded that there is substantial evidence that the Texas law will discriminate against minorities. Prosecutors in Washington in effect are using that finding to request the deposition of Texas lawmakers, something that is permissible by law but by no means common.

This newspaper opposed the Texas voter identification law. When it comes to the release of information, particularly as it applies to the act of governing, we are almost always on the side of more and not less. In this instance, however, we are swayed by the arguments of Texas Attorney General Greg Abbott. In court filings and in an interview, Abbott argued persuasively that the Justice Department does not meet the legal standard for compelling testimony from lawmakers.

The legal precedent at issue here would allow the deposition of lawmakers if a state law was enacted with a racially discriminatory purpose. For it to apply, however, you would have to have circumstantial evidence of discriminatory intent and little or no sense of what motivated legislators to introduce and pass the law. The Justice Department argument falls short on both counts.

Finding that a law discriminates is very different from finding that legislators intentionally set out to discriminate. The Texas voter ID law, regardless of how you feel about it, was modeled on the one that was passed in Indiana and ruled constitutional by the Supreme Court. In other words, it was not the product of a cabal working with ill intent behind the scenes. Passing laws identical to Indiana's is the national strategy of proponents of voter ID. Republicans are driving this issue and, to no one's surprise, Texas followed the vetted model.

The second point is equally important. The legislative process that produced the law in Texas was very open — the public debate included hearings and testimony. No one can argue that Texans did not know what drove legislators to enact the law. The record of deliberation is there for all to read.

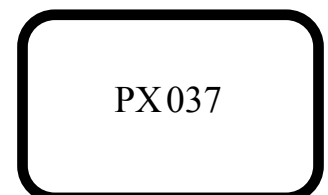
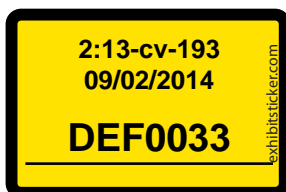
Attorney General Eric Holder has taken a very public stance against voter ID laws, and perhaps this request is a sign of how committed his department is to the fight. But there's a difference between fighting the good fight and fighting unfairly and unwisely. In this instance, it is the Texas attorney general who is in the right.

A convincing argument

Attorney General Greg Abbott, citing legal precedent, argues that compelling the testimony of legislators should occur only when several standards are met:

"An 'extraordinary' instance will arise only when there is *both* circumstantial evidence of discriminatory purpose (from the racial impact and the historical background of the law) *and* when the publicly available legislative history presents no evidence whatsoever — whether meaningful or suspect — of the legislature's motives or intentions."

— Brief filed in *State of Texas vs. Eric H. Holder Jr., Attorney General of the United States*, April 13, 2012



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